

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

**SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 87 (UNIVERSAL BUILDING MAINTENANCE)**

and	Case Nos. 20-CB-153693
RUDIS E. AMAYA, An Individual	
and	20-CB-153712
DANITZA CABRERA, An Individual	
and	20-CB-153724
MARIA M. CHAVEZ, An Individual	
and	20-CB-153734
MARGARITO AGUILAR, An Individual	
and	20-CB-153752
JULIA GONZALES DE GODINEZ, An Individual	
and	20-CB-153771
RUBIDA D. AGUILAR DE PINEDA, An Individual	
and	20-CB-153795
SEGUNDO IGNACIO JARA, An Individual	
and	20-CB-153796
EVELYN ORELLANA, An Individual	
and	20-CB-153801
ITZEL ANAHI REVUELTA ALCAZAR, An Individual	
and	20-CB-153838
GERARDO ALBERTO SANCHEZ, An Individual	
and	20-CB-153851
ANA GRANADOS DE LOZANA, An Individual	

and

20-CB-153852**DANIELA REVUELTA, An Individual**

5 and

20-CB-153901**MARIA LOURDES SANCHEZ, An Individual**

and

20-CB-15392310 **ESTHER MARIN, An Individual**

and

20-CB-15406515 **JAVIER LOZANO, An Individual***Sarah McBride, Esq., for the General Counsel.**Kevin Brunner, Esq. and Jane Brunner, Esq. (Siegel & Yee), for the Respondent*20 **DECISION****Statement of the Case**

25 **Joel P. Biblowitz, Administrative Law Judge.** This case was heard by me on November 9 and 10, 2015, in San Francisco, California. The consolidated complaint herein, which issued on August 31, 2015,¹ was based upon unfair labor practice charges that were filed on June 4 by the 15 individuals listed above. The Charging Parties, and others had been employed as janitorial employees at the Zynga Building by ABM Janitorial, herein called ABM, which had performed this work at the building from about 2012 through May 31. ABM had a

30 collective-bargaining agreement covering these employees with Service Employees International Union, Local 87, herein called the Respondent and/or the Union. Sometime in May, the contract to perform this work was awarded to Universal Building Maintenance, herein called UBM, effective June 1 and UBM told the ABM employees at the building that it intended to hire all of them; however, on about May 28 or 29, the Respondent, by Olga Miranda, its president,

35 told the employees that some of them could not work for UBM at the building and told UBM that it could not hire them. The complaint alleges that the Respondent engaged in this conduct because the Charging Parties and other of ABM's employees failed to use the Respondent's hiring hall to obtain work with ABM and for reasons other than their failure to tender uniformly required initiation fees and dues to the Union. In addition, it is alleged that the Charging Parties

40 asked Miranda about the Union's hiring hall to determine whether they were being treated fairly by the Union regarding job referrals to UBM, but the Union refused to give the employees this information. It is alleged that by this conduct, the Respondent violated Section 8(b)(1)(A) and (2) of the Act.

45 **I. Jurisdiction**

Based upon the testimony of Jason Stapleton, the regional vice president of UBM, I find that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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¹ Unless indicated otherwise, all dates referred to herein relate to the year 2015.

II. Labor Organization Status

Respondent admits, and I find, that it has been a labor organization within the meaning of Section 2(5) of the Act.

III. The Facts

From about 2012 until May 31 ABM performed the janitorial services at the Zynga Building located at 650 Townsend Street in San Francisco. During that period, ABM, through the San Francisco Contractors Association, was party to a contract with the Respondent effective from August 1, 2012, through July 31, 2016, covering its janitorial employees. On May 8, UBM was awarded the contract to perform this work, effective June 1, replacing ABM. UBM signed a contract with the Union prior to beginning work at the building. Relevant portions of this contract are:

SECTION 25 BIDDING PROCEDURES

25.1 Whenever the Employer bids or takes over the servicing of any job location, building or establishment covered by this Agreement, and where the daily work being performed amounts to seven and one-half (7 1/2) hours or more, the Employers agrees to do the following:

(a) Retain all permanent employees at the job location, building or establishment including those who might be on vacation or off work time because of illness, injury or authorized leave of absence; and recognize that the work time and overall employment service of all such employees shall be considered as continuous, regardless of change of Employers, for all purposes, including seniority, sick leave and vacation benefits, so that no such permanent employee will lose any such benefits because of the change of Employers.

(b) Contact the Union for the number of permanent employees, all job classifications, starting and quitting times, the number of daily hours worked, the rates of pay, and the number of hours each. such employees is credited with for purposes of the Progression Rate at such location. The Union agrees to supply such requested information within five (5) working days or the Employer is free to bid the job as he sees fit.

25.2 Within the 30 days of a building changing contractors, the current contractor will not be allowed to transfer anyone into the building. The outgoing contractor, at its discretion, can transfer out an employee within the 30 days of a building transfer.

EXHIBIT C

THE FILLING OF AVAILABLE POSITIONS

Notwithstanding any other provision of the Agreement, this provision shall cover the filling of available positions by each Employer (Contractor) covered by the Agreement.

Each Employer agrees to maintain four separate lists. The first list will be the Permanent Employee list that will include all Permanent Employees and their

building assignments. (Permanent employees are defined as those employees who are assigned by the Employer to a particular workstation on a daily and permanent basis.) The second list will include temporary employees who were permanent for a particular Employer but are now laid off and shall be known as the "A List".

The third list will include top wage rate temporary employees for a particular Employer and shall be known as the "B List". (Top wage employees are defined as those employees who have never been permanent.) The fourth list will consist of temporary employees who are earning less than top wage rate for a particular Employer and shall be known as the "C list". To be included on any Employer's "C list", an individual must have worked at least one (shift) in the last twelve (12) months for that Employer.

C.2 The placement of employees on the "A through C list" will be as follows:

(a) Employees, who were permanent for a particular Employer but are now laid off, will be at the top of the list for that Employer (A list). The ranking among these employees will be by seniority date.

(b) The next ranking will be of employees who are earning the top wage rate for a particular Employer who have never been permanent (B list). The ranking among these employees will be by seniority date.

(c) The next ranking will be of those employees who are earning less than top rate for a particular Employer (C list). The ranking among these employees will be based on the number of accumulated hours worked for that Employer.

C.3 When a permanent position becomes available the most senior employee on the A list will be offered said permanent position. If there is no A list employee then the most senior employee on the B list shall be offered said permanent position. If there is no B list employee available then the most senior employee on the C list shall be offered said permanent position. For day porter and foreperson positions, client and Employer approval will also be a determining factor. For janitorial positions that require specific skills, the Union/Employer will do it's best to dispatch/place a member with the required capabilities.

C.4 (C.3 original) On any given day, the Employer shall fill available temporary positions with the employee on its A, B or C List who is not working that day in the order of seniority, except for day porter, foreperson positions, and for janitorial positions that require specific skills. However, if the employee filling a temporary position chosen by the employer is on the C list the most senior employee from the A, B or C list can bump the lesser wage temporary Employee, with 24-hour notice, except under extended leaves of absence of 12 months or longer covered in Section 14.5 of this Agreement.

C.5 In hiring, the Employer may consider individuals recommended by the Union. For day porter and foreperson positions, client and Employer approval will also be a determining factor.

C.6 The employer will notify the union when there is a permanent open position in the day porter classification.

C.7 On an emergency basis that does not exceed three (3) days for day porters and forepersons and two (2) days for other positions, the employer may fill the

temporary vacancy by an employee of their choice.

C.8 An employee will be removed permanently from an Employer's A, B or C list for any of the following reasons.

- Termination for Just Cause
- Not working three shifts within the last twelve (12) months, except for employees on the A or B list.
- Refusing to accept three (3) dispatches, without just cause, within a thirty (30) day period will be considered a voluntary quit, except for employees on the A or B list.
- Not responding to three (3) Employer notifications for dispatch without just cause within a thirty (30) day period will be considered a voluntary quit, except for employees on the A or B list. It is understood that an employee will be considered to have not responded to a notification for dispatch on a given day only if the notification was given at some time from 3:00 p.m. to 4:30 p.m. on that day, except under extenuating circumstances. It is further understood that this paragraph does not in any way restrict the Employer's right to notify for dispatch at any time before 3:00 p.m. or after 4:00 p.m.

C.9 Each Employer shall supply the Union with a copy of the lists stated in C.1. Thereafter, each Employer shall supply the Union with a daily report concerning the filling of temporary vacancies no later than 3:00 p.m. following the completion of the previous workday. For Friday, Saturday and Sunday reports, they shall be supplied to the Union the following Monday, unless Monday is a holiday, in which case the requirement unless there are extenuating circumstances such as phone line being down, in that case the Employer is required to supply the daily report as soon as possible.) This report shall contain the following information:

- Employee Name
- Name and address of new hires
- Current Assignment, if any
- Date of assignment, if any
- Employee being replaced
- Reasons for Open Position
- Estimated Duration

In addition, each Employer shall supply the Union with an updated version of its permanent list once every six months and an updated version of its A, B and C list once every month.

C. 13 If an employer agrees to only use the Union hiring hall to fill all positions, both permanent and temporary, it can sign a side letter to opt out of Exhibit C provisions applicable to filling of available positions by the hiring hall.

C. 14 The Employer agrees to participate in a union hiring hall pursuant to written procedures and responsibilities established by a labor-management committee. The labor-management committee establishing such procedures and responsibilities shall consist of two management representatives appointed by the San Francisco Maintenance Contractors Association, and two union representatives appointed by Union. Employer may subsequently cease participation in the hiring hall if it is unable to efficiently obtain and assign qualified staff.

On May 8, Devin Samaha, vice president of sales for UBM, sent an email to Miranda² and Ahmed Abozayd, vice president of the Union, stating:

Ahmed/Olga, please see request for a quote for janitorial services for 699 8th Street (Zynga) and 650 Townsend. Please provide us the staffing. Both buildings are cleaned by ABM. Per Section 25.1(b) of the CBA in which UBM is signatory, please provide the staffing to us within 5 working days. This information should include job classifications, starting and quitting times, the number of daily hours worked, the rates of pay and seniority date. We are really looking forward to finally working with SEIU #87.

On May 12, Samaha sent another email to Miranda and Abozayd reminding them that he needs the staffing information and had not yet received it, and on May 18, he sent a third email to them stating:

Ahmed. Please provide staffing. This is my third request. If we don't have a staffing by end of day today, we will move forward with our own staffing per the collective bargaining agreement, as we need to provide our bid by tomorrow.

They received this staffing information at the end of May. Stapleton testified that UBM has a practice of meeting the employees at a building it is going to work at prior to the effective date of the contract, and he first met with the janitorial employees at Zynga in the middle of May:

The first meeting was a meet and greet to kind of introduce our company, discuss our plan to retain the employees that were on site, hand out applications to employees. And then our follow up meeting was to come back and collect the applications and just discussion [sic] our transition plan.

About 30 to 35 employees attended this meeting and "Marvin," a night-shift supervisor, translated from English to Spanish. He told the employees that UBM would retain all of them at the request of the client and he handed out applications. Employees asked if they would be retained, and if they would keep their seniority and benefits, and he answered that their intention was to keep all of the employees and maintain their wages, benefits, and seniority. He told them that it was important that they return the job applications.

On about May 26, Matt Quinn, UBM's project manager, informed Stapleton that employees at Zynga told him that the Union told them that they could not remain at the building and work for UBM and that they had to "return to" ABM. After learning this, he and Quinn met with Miranda and Abozayd on about May 28. Stapleton told them that he heard from about twenty employees that the Union told them that UBM was not allowed to retain them and he asked why and Miranda said that they were ABM employees, ABM temps, and they had to report back to ABM on Monday. Stapleton asked why UBM could not employ them and Miranda said, "That's not how we do things here in Northern California. Those are ABM's temporary workers and they need to report back to ABM on Monday." Stapleton told her that they wanted to retain all the employees at the building and asked if it was possible for the employees to

² On October 28, 2015, counsel for the Respondent filed a motion to postpone the hearing stating that Miranda has informed them that she would not be able to attend the hearing on November 9 and 10, 2015, "because she is scheduled to have a medical procedure..." Counsel for the General Counsel opposed the motion and it was denied. At the hearing, counsel for the Respondent requested that I permit Miranda to testify by telephone. That request was also denied, and she did not testify.

resign from ABM and come to work for UBM. Miranda responded: "That's not how we do things here, and you're starting to piss me off and if you want to play this game you'll see what we're all about. And don't try to circumvent me. You have to hire your own employees. That's how we operate." Miranda told him that he had the option of hiring his own employees, but they had to
 5 come through the Union's referral process and that the Union had a list of candidates for the jobs and that he could use the Union hall to interview the applicants.

Stapleton next met with the employees later that day at the Zynga Building at about 6 P.M. About 15 employees were present for the meeting, as was Marvin, who again did the
 10 translating. Sometime prior to this meeting, the Union gave UBM a list of "a select group of employees who could remain at the building" with UBS. The other employees were classified by the Union as temporary and could not continue working at the building. At the meeting, he told the employees who were on the permanent list that they could remain, and that the others could not remain employed at the building with UBM. The employees were upset and asked why they
 15 couldn't remain at the building when they had worked there for many years. He told them that the Union had told him that those not on the list had to go back with ABM. Stapleton testified that the Union's directive that the employees who were not on the list had to remain with ABM did not comport with the union contract that he signed.

On the next day Stapleton and Quinn went to the union hall to interview applicants for jobs at the Zynga building. About 30 job applicants were present and he asked how many had janitorial experience, and about half of those present said that they did. Abozayd told him that in order to be fair, that they should interview based upon ethnicity, and asked them to interview an Egyptian woman first, which they did. Stapleton testified that he believes that all 30 to 35 of the
 25 individuals who were interviewed at the Union hall that week were hired by UBS. As he left the union hall he saw Marvin together with four or five of the Zynga janitorial employees. Marvin, translating for them, said that they wanted to know if they could apply to work for UBM and he told them that they had to speak to the Union, but they had previously said that because they were temporary employees, they could not reapply. Of the approximately 35 employees
 30 employed by UBM at Zynga, about 13 were employed there by ABM; the remaining employees came from the union hall.

In addition to Stapleton, a number of Zynga employees as well as Abozayd testified. Maria Sanchez testified that she was employed at the Zynga Building by ABM from September
 35 2014 through May 29, 2015; she worked Monday through Friday, 4 hours each day and was never told whether she was considered a permanent or a temporary employee. After she began working for ABM, she joined the Union and paid an initiation fee and dues to the Union. On May 28 Miranda met with about 15 employees at the building and told them that ABM lost the contract at the building and she did not believe that the temporary employees were going to
 40 stay at the building: "even though she never clarified for us whether or not we were permanent or temporary employees, not until the end." Sanchez asked her why she couldn't stay working at the building and Miranda said that it was because she was a temporary employee and "belonged to ABM." Sanchez objected and said that she was not ABM's property and would work wherever she got a job. Miranda said that she could work anywhere she wanted, but not at
 45 the Zynga Building. On the following day, Miranda returned and told the employees (the same ones that she had met with the prior day) that she had a list of the permanent and temporary employees and she read the names of the employees who were staying and who were not staying. Maria Chavez said that she had worked there for 4 years and did not understand why she could not stay while two people that she named who were staying had only been employed
 50 at the building for 2 years, but Sanchez does not recall Miranda's response. It was never explained to her how the list was compiled or why some employees were classified as permanent and others were temporary. About a week before these meetings, a representative

of UBS met with the employees and told them that they could all stay at the building when they took over the operation because the building said that they didn't have any problem with the employees. Some employees asked about the pay and benefits and he said that everything would remain the same, and he told them that he would leave job applications with the supervisors. On that day or the next day, she and the other employees completed the job application for UBS and returned it to the supervisor. Sometime after that, she went to the union hall and saw a man who was handing out applications, although it is not clear from her testimony what company the applications were for. She extended her hand to take an application, but he said that he was sorry, but he could not give her one. When she walked out of the building, she met with other employees who were talking to Stapleton. They asked why he couldn't employ them, and he said that he couldn't violate the rules that the Union was giving him and that he did not want to have a protest in front of the building. She testified further that from the time that she became a member of the Union until she finished her employment with ABM, the Union never explained to her how the hiring hall worked.

Rudis Amaya was employed full time at the Zynga Building from March 2013 to May 29 and was a member of the Union, paid up in dues and initiation fee. On about May 20, somebody from UBM came to the building and spoke to a group of about 12 employees. He spoke in English while a coworker translated. He said that he was with the new company that was going to be in the building and they were interested in keeping them at the building and their salary and benefits would remain the same. He distributed job applications and told the employees that they can turn them in when they start with UBM. On about May 28, Miranda came to the building with two other people at about 8 p.m. and met with a group of about 10 employees, including Amaya. She spoke in both English and Spanish. Although he was not present for the entire meeting, he was present when "Danitza" asked what would happen to the people "that were going to stay" and Miranda responded that if they were going to stay, they "...were going to start from the beginning." Miranda returned to the building the following day at about 7 p.m. and met with about 10 employees. Amaya was still on his shift so he was only present for about 5 minutes, but he heard Miranda say that only the people who were permanent employees were going to stay: "They said that the permanent employees were only the people who were making the maximum salary or the people who had started when the company started." That was the only time during his employment at ABM that anybody from the Union told him that was the difference between a temporary and a permanent employee. Miranda had a list containing the names of the permanent employees, and he told her that one person on the list had been employed at the building only 2 days while he was there for 2 years, and she responded that he was one person and Amaya was another person. Although there was some confusion among the employees about why they could not continue to work in the building when they had been there for a long time, he does not remember Miranda responding to this concern.

Amaya went to the union hall on June 1 and met Stapleton, who asked him if he was working and called him into a room and said that he wanted to interview him. At that point, Miranda came in and told him that he should wait outside and he was not interviewed by Stapleton. Before he left the union hall, Miranda told him not to worry, because he was going to receive a call from "Leslie," although that never developed into a job. Neither the Union nor ABM has ever explained to him how to use their hiring halls, and he got a job at ABM by going to their office.

Gerardo Sanchez was employed at the Zynga Building from September 2014 until May 29 and was a member of the Union during that period. On about May 20, people from UBM came to the building and met with about 28 employees at about 9:30 or 10 p.m. He testified:

They said they were the new company, that everything was to remain the same, that they were going to respect the wages that each of us had, and that the only thing that was going to change was the name of the company, that ABM was the former company that had lost the contract and that UBM will take on the contract.

5 The UBM person asked the employees if they wanted to stay with them and all those present said that they did. He completed an employment application for UBM and gave it to his supervisor. On May 28, Miranda and another woman came to the building and met with about 10 15 or 20 employees. She said that there was going to be a new company at the building and asked the names of the employees and asked if they wanted to work full time; all but one said that they did, and Miranda said that she would return to the building the following day with a list. On the following evening, Miranda told the employees that she had a list of employees who were going to stay working for the new company. When he saw the list he asked Miranda why 15 the Union was leaving some of them out when they were members of the Union and she said that other people in the Union had more seniority than they had and that the ones who were not on the list would belong to ABM and that they could "...call dispatch and that they were going to give us work." Some employees said that they had been at the building longer than some of the employees on the permanent list. A day or 2 later he went to the union hall and met outside the 20 hall with some of the building employees and Stapleton, who said that he was sorry that he didn't have a chance to give them applications because he was pressured by the Union and that if he employed them, the Union could protest outside the building. He testified that he was never provided with information on how the Union operated its hiring hall.

25 Itzel Anahi Revuelta Alcazar was employed part time Monday through Friday at the Zynga Building from December 2014 through the end of May. She was a union member current in his dues and initiation fee. Miranda came to speak to the employees on two occasions. At the first meeting she told the employees that they could stay with ABM or that if they wished, they could work for UBM. At the second meeting, she brought a list of the employees who could stay at the building and told some of them that UBM could not hire them because they are union 30 workers. She told them that the people who had more years working there could stay. On the following day, she and her sister met with Miranda at the union hall and Miranda said that she would make a deal with her: "That I should go to school and register, and once I brought back the proof that I had registered, she was going to give us work." She also told them that they should forget about the Zynga Building because they would never return there.

35 Maria Chavez, who was called as a witness by the Union, testified that she began working at the Zynga Building in March 2012 and about 2 years later was transferred to an attached building, although it is not clear whether that was considered a part of the Zynga Building. On direct examination she testified that she did not file an unfair labor practice charge 40 with the Board, but on cross examination she remembered having come to the Board with other employees from the building and filing a charge against the Union. She attended a meeting where a representative of UBM told the employees that they could remain at the building; she also attended a meeting with Miranda, but could not remember much of what was said. However, employees asked how they could remain at the building with UBM, but the Union did 45 not answer these questions.

Evelyn Orrellana, also called by the Union, was employed at the Zynga Building from September 2013 through May 26; on that day, she was suspended for 2 days. Prior to leaving, a 50 representative from UBM told the employees that they could remain at the building with the same wages and seniority. She never attended a meeting with Miranda.

Danitza Cabrera, called by the Union, began working at the Zynga Building in September 2013; at the end of May, a representative of UBM told them that they could continue to work at the building with the same seniority and wages. After that, Miranda spoke to the employees and told them who was going to be allowed to stay working for the new company.

5 Employees asked questions such as, could they resign from ABM and work for the new company? Miranda told them, "No. You guys belong to ABM. You have to go with ABM." Julia Gonzales de Godinez had been employed at the Zynga Building since July 2014; like Cabrera, she was suspended shortly before the changeover to UBM and did not attend the meetings with Miranda. However, she did attend the meeting when Stapleton told the employees that they
10 could continue working at the building with the same wages and seniority. However, in the first week of June her supervisor told her that during the prior week, Miranda met with the employees and showed them a list of the people who were going to be able to stay on, while the rest would have to call to dispatch.

15 Antonio Partida, the senior branch manager in San Francisco for ABM, testified that ABM has its own hiring hall and does not use the Union's hall. Its employees call the ABM dispatch telephone number and they are dispatched by seniority. This system is explained to employees when they are initially hired. ABM is a signatory to the Master Agreement between the San Francisco Maintenance Contractor's Association and the Union, and he is familiar with
20 the contract. He was asked the difference between permanent and temporary status:

The folks that are permanent, there's a few different ways they're permanent. One is we inherit the account and they're permanent already and they continue to be permanent with ABM. People that are on the B-list which are the top rate employees, if their
25 positions open those people are made permanent in those positions, if available. And there's other ways to get your permanency besides that which is kind of a gray area in our contract.

He was asked about the "gray area:"

30 In this particular case with Zynga, this was a non-union contract to union contract. So, since we started that contract, the people that started at that contract, we felt those folks were permanent because they'd been there since the beginning because of non-union and the union site. Some of those people---most of those people were inherited from the
35 previous company so those folks are permanent at that site.

He testified further, that under the terms of the contract, when a company loses a contract, its permanent employees are hired by the incoming union contractor and are made permanent, and the temporary employees remain with the former contractor. When ABM lost the Zynga
40 contract, they created a list of the permanent employees and, he believes, it was distributed to all the employees. The letter, dated May 29, states:

45 ABM's last day at the above sites is May 31, 2015. The intent of this memo is to inform you of your employment status after May 31st per the collective bargaining agreement between the SF Contractors (ABM) and SEIU Local 87(Union).

For those who have been given Permanent status, you will be retained by the new contractor with your current pay rate, seniority date and benefits. The union will provide your information to the new contractor. Those employees that are permanent are listed
50 below. Your last check with your vacation balance will be issued as soon as possible.

All others (temporary) will need to call ABM Dispatch on Monday, June 1st for dispatch... You will be dispatched to work based on your union seniority.

5 The letter listed 17 permanent employees with union seniority dates from January 4, 1999 to July 25, 2012. On cross examination, he testified that he does not believe that employees, when hired by ABM are given any documents explaining the difference between permanent and temporary employees.

10 Abozayd is the union vice president. He testified that the union hiring hall dispatches employees to UBM and other employers on a seniority basis; ABM maintains its own dispatch system. Prior to UBM assuming the contract at the building, nobody from UBM spoke to the Union about who was going to be employed by UBM at the building. When he learned that UBM told all the employees at the building that they would remain there with UBM, he and Miranda met with Stapleton and told him: "And we object to that because the rules in San Francisco are that you don't do anything before the temps must go [sic] the permanent people must stay." In addition, UBM's promise to the temporary employees that they would maintain their wages, seniority and benefits was not permitted under their contract. When he and Miranda met with Stapleton, they explained the contract and he apologized for making the promises to the temporary employees saying that he didn't know how the Union operated in San Francisco; at this meeting neither he nor Miranda threatened to picket the building. Shortly thereafter, he and Miranda met with the employees at the building and told them that only the permanent employees would remain at the building and that the temporary employees would remain with ABM. A lot of the employees were unhappy because UBM had promised them that they would remain at the building with the same wages and benefits, and he and Miranda told the employees that they could be dispatched by ABM or could go to the Union's hiring hall, but that it would be to their advantage to be dispatched by ABM because they would maintain their wages, benefits and seniority. ABM gave the Union a list of the permanent employees and the Union gave it to UBM. On cross examination, he was asked:

30 Q Mr. Abozayd, your testimony regarding a changeover in employers when temporary employees leave a building, your testimony was in accordance with past practice, is that correct, that that was the past practice that the Union follows?

A This is my knowledge.

35 Q Okay. That testimony that temporary employees must exit with an outgoing employer is not clearly stated in any section of this contract, is it?

A That's correct.

40 As for the union's hiring hall, there are signs at the Union's office explaining the operation of the hiring hall and every month there is a union meeting for new members at which they talk about the hiring hall and he has never refused to answer a member's question about the hiring hall.

45 IV. Analysis

50 The principal allegation is that by telling Stapleton that UBM could not hire all of the ABM employees at the Zynga building and by telling the ABM "temporary employees" at the building that they belonged to ABM and could not work for UBM, the Respondent violated Section 8(b)(1)(A) and (2) of the Act. Credibility is clear here. Stapleton, who was subpoenaed to testify by counsel for the General Counsel, testified in a direct and credible manner even though he

has a contract with the Union, and his testimony is credited totally. Stated another way, he would have no reason to lie. The employees also testified credibly, although some of their testimony was not as precise as one would have liked it to be, but that may have been due to the fact that some of the discussions were in English with Spanish translations. Overall, their testimony is credited as well. Because of that, I find it unnecessary to draw an adverse inference from Miranda's failure to testify as requested by counsel for the General Counsel.

The facts are fairly straightforward and undenied. UBM received the contract to perform the work at the building on May 8, effective June 1, and told the employees at the building that it intended to hire all of them without loss of pay, seniority, or benefits. About 2 or 3 days prior to the June 1 date, Miranda told the employees that only the "permanent" employees could work for UBM and that the "temporary" employees "belonged" to ABM. It should be noted that the evidence establishes that these employees were all members of the Union and paid up in their initiation fee and dues. At a meeting on May 28 Miranda told Stapleton that the company could only employ the employees at the building who were classified as "permanent." When he asked if the employees could resign from ABM and work for UBM, she told him that was not how they do things in Northern California "...and you're starting to piss me off and if you want to play this game, you'll see what we're all about. And don't try to circumvent me. You have to hire your own employees." On the following day, he went to the union hall where he interviewed and hired employees selected by the Union to supplement the "permanent" ABM employees.

The law is clear that absent an exclusive hiring hall agreement between a union and an employer, if the union causes or attempts to cause an employer to terminate or refuse to hire certain individuals and replace them with individuals of the union's choice, this constitutes a violation of Section 8(b)(1)(A) and (2) of the Act. *Bricklayers, Masons and Plasterers' International Union of America, Local No. 2, AFL-CIO*, 205 NLRB 478 (1973); *Local 17, International Union of Operating Engineers, AFL-CIO*, 231 NLRB 1287 (1977); *Kvaerner Songer, Inc. and Local 344, Laborers*, 343 NLRB 1343, 1346 (2004). I find that there is no evidence that an exclusive hiring hall existed between the parties prior to May 29, when UBM went to the union hall to interview applicants selected by the Union; the contract did not provide for it and UBM did not sign any agreement with the Union requiring it. The fact that UBM interviewed applicants recommended by the Respondent at the union hall does not establish that an exclusive hiring hall existed between the parties. In fact, counsel for the Respondent in his brief states that no exclusive hiring hall existed between the Respondent and UBM.

As the Respondent told the "temporary" employees that they could not work for UBM, and told UBM that it could not employ them, the Respondent violated Section 8(b)(1)(A) and (2) of the Act. Although there was no explicit threat made to Stapleton at the May 28 meeting, there was certainly an implied threat: "If you want to play this game, you'll see what we're all about. And don't try to circumvent me." However, to find this violation, there need not be a threat: "it is long-settled that the statutory requirement of 'cause or attempt to cause' is satisfied by an efficacious request." *San Jose Stereotypers (Dow Jones & Co.)*, 175 NLRB 1066 fn. 3 (1969).

Even if the parties were subject to an exclusive hiring hall arrangement at the time that the Union notified UBM and the employees that they could not be employed by UBM, it would still violate the Act. In *Steamfitters Local Union No. 342*, 336 NLRB 549, 550 (2001), the Board stated:

We adhere to the Board's longstanding position that any departure from the established procedure for an exclusive hiring hall that results in denial of employment to an applicant violates the duty of fair representation and Section 8(b)(1)(A) and (2), unless the union can demonstrate that the departure was pursuant to a valid union-security clause or was

necessary to the union's effective performance of its representative function. We reaffirm that such departures encourage union membership by signaling the union's power to affect the livelihoods of all hiring hall users, and thus restrain and coerce applicants in the exercise of their Section 7 rights.

As there was nothing in its contract that permitted the Union to engage in this conduct, this also violates the Act. *International Association of Bridge, Structural and Ornamental Iron Workers, Local 118, AFL-CIO*, 309 NLRB 808 (1992).

It is further alleged that since about May 28, the Respondent has refused to provide the employees with information about its hiring hall. However, as I have found that the Respondent violated the Act by not permitting UBM to employ all of the ABM employees at the building, there was no need for them to use the hiring hall and therefore no need for them to understand its operation. I therefore find it unnecessary to make a finding on this allegation.

Conclusions of Law

1. Universal Building Maintenance, LLC has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(b)(1)(A) and (2) of the Act by telling UBM that it could not hire all of the janitorial employees at the Zynga Building and by telling the employees that some of them could not work for UBM because they belonged to ABM.

4. I find it unnecessary to make a finding on the remaining allegations contained in the consolidated complaint.

The Remedy

As the Respondent violated the Act by telling UBM that it could not employ the "temporary" employees of ABM at the Zynga Building and told those employees that they could not work for UBM because they belonged to ABM, the Respondent will be ordered to cease and desist from engaging in this conduct and to notify UBM, in writing, within 7 days of this Decision that it has no objection to them employing the former ABM employees at the building, and, in addition, it will inform all the employees employed by ABM at the building who were classified as "temporary employees" that it has no objection to them being employed by UBM or any other employer. In addition, the Respondent will make whole the Charging Parties and all the other employees who were classified as temporary employees for any loss that they suffered because the Respondent refused to permit them to work for UBM. In making these individuals whole for their loss of earnings or other benefits, the loss will be computed on a quarterly basis from May 28, 2015, to a date when they obtained regular employment at their wage rate while employed by ABM, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), enf. denied on other grounds sub.nom., *Jackson Hospital Corp. v. NLRB*, 647 F. 3d 1137 (D.C. Cir. 2011). I shall also order the Respondent to file a special report with the Social Security Administration allocating their backpay to the appropriate calendar quarters and to compensate them for any adverse income tax consequences of receiving his backpay in one lump sum.

Upon the foregoing findings of fact, conclusions of law, and on the entire record, I hereby issue the following recommended³

ORDER

The Respondent, Service Employees International Union, Local 87, its officers, agents, and representatives, shall:

1. Cease and desist from

(a) Telling Universal Building Maintenance or any other employer that it cannot employ its members because they must continue to work for another employer.

(b) Telling its members that they cannot work for Universal Building Maintenance, or any other employer, because they must work for their former employer.

(c) In any like or related manner interfere with, restrain, or coerce its members in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify Universal Building Maintenance and other employers, in writing, that the Union has no objection to your employing the former employees of ABM at the Zynga Building.

(b) Notify the former employees of ABM at the Zynga Building, in writing, that the Union has no objection to their being employed by UBM or by any other employer.

(c) Make whole for the loss of earnings and other benefits the employees of ABM at the Zynga Building who were not permitted to work for UBM as set forth above in the remedy section.

(d)) File a special report with the Social Security Administration allocating their backpay to the appropriate calendar quarters and compensate them for any adverse income tax consequences of receiving their backpay in one lump sum, as prescribed in *Latino Express, Inc.*, 359 NLRB No. 44 (2012).

(e) Within 14 days after service by the Region, post at its union hall in San Francisco, California, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and

³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

- 5 (f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 22, 2015

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Joel P. Biblowitz
Administrative Law Judge

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APPENDIX

NOTICE TO MEMBERS

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT tell Universal Building Maintenance or any other employer that they cannot employ individuals of their choosing because they can only work for another employer.

WE WILL NOT tell our members that they cannot work for Universal Building Maintenance or any other employer because they can only work for another employer.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL permit our members to work for the employer of their choice and **WE WILL** notify all of the employees of ABM at the Zynga Building in May 2015, in writing, in English and Spanish, that they have the right to work for any employer that they choose.

WE WILL make whole all of the employees of ABM Janitorial employed at the Zynga Building for any loss of earnings and other benefits resulting from our actions in not permitting them to work for UBM at that building.

**SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 87 (UNIVERSAL BUILDING MAINTENANCE)**
(Employer)

Dated _____ **By** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

901 Market Street, Suite 400
San Francisco, California 94103-1735
Hours: 8:30 a.m. to 5 p.m.
415-356-5130.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/20-CB-153693 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 415-356-5139.